

May 20 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

Cause No.: DA 09-0510

STATE OF MONTANA, *ex rel.*
DEPARTMENT OF ENVIRONMENTAL QUALITY,

PLAINTIFF/APPELLANT and CROSS-APPELLEE,

v.

BNSF RAILWAY COMPANY,

DEFENDANT/APPELLEE and CROSS-APPELLANT.

FILED

MAY 18 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

**UNOPPOSED MOTION FOR PERMISSION TO EXCEED WORD
LIMITATION IN APPELLANT'S COMBINED REPLY BRIEF/
CROSS-APPEAL ANSWER BRIEF**

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On Appeal from the First Judicial District Court, Lewis and Clark County
The Honorable Jeffrey M. Sherlock, Presiding
District Court Cause No. BDV 2004-596

Appellant State of Montana *ex rel.* Department of Environmental Quality (“DEQ”) respectfully moves this Court for permission to file an over-length Combined Reply Brief/Cross-Appeal Answer Brief, pursuant to M. R. App. P. 12(10). DEQ requests that the 5,000 word limit for combined Reply and Cross-Appeal Answer Briefs, set forth in M. R. App. P., Rules 12(4) and 11(4)(a), be increased to 7,500 words. While DEQ would prefer a total word limit of 10,000 words, it has reduced its request to match the additional length (2,500 words) this Court allotted to Appellee/Cross-Appellant BNSF Railway for its Answer and Cross Appeal Brief. The 5,000 word limit for DEQ’s Combined Reply Brief/Cross-Appeal Answer Brief, set forth in M.R.App.P. 12(4) and 11(4)(a), is insufficient given the circumstances of this case.

This appeal is the first time the Montana Supreme Court will fully interpret numerous provisions of Montana’s Comprehensive Environmental Cleanup and Responsibility Act, Mont. Code Ann. §§ 75-10-701, *et seq.* (“CECRA”). Most importantly, this Court will clarify the scope of DEQ’s authority under CECRA to set standards for environmental cleanups, and the meaning and reach of CECRA’s joint and several liability scheme. The Appeal also raises constitutional and tort issues of first impression for this

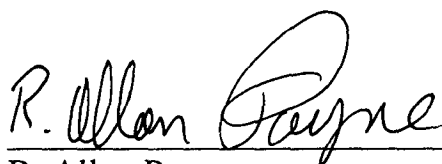
Court. While an Answer Brief is generally considered a “principal” brief and allowed 10,000 words and a reply brief is allowed 5,000 words (M. R. App. P. 11(4)(a)), a brief combining an answer to a Cross Appeal and a reply to the Appellant Brief is limited to 5,000 words. M. R. App. P. 12(10). In this situation, DEQ is, therefore, required to do twice the work in half the space.

Given the number and extraordinary weight of the legal issues before this Court, it is just and reasonable to increase DEQ’s Combined Reply Brief/Cross-Appeal Answer Brief word limit from 5,000 to 7,500 words. An Affidavit in support of this Motion demonstrating extraordinary justification for this request is filed herewith.

Counsel for Appellee/Cross-Appellant BNSF Railway has been contacted and does not object to this request.

A proposed Order is also submitted herewith.

DATED this 18th day of May, 2010.

A handwritten signature in black ink, reading "R. Allan Payne". The signature is written in a cursive, flowing style. The first name "R." is small, followed by "Allan" and "Payne" in larger, more prominent script. The signature is positioned above a horizontal line.

R. Allan Payne

Attorney for Appellant / Cross-Appellee

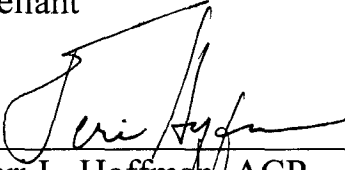
CERTIFICATE OF SERVICE

I hereby certify that on the 18 day of May, 2010, a true and correct copy of the foregoing ***UNOPPOSED MOTION FOR PERMISSION TO EXCEED WORD LIMITATION IN APPELLANT'S COMBINED REPLY BRIEF/CROSS-APPEAL ANSWER BRIEF*** was duly served via First Class U.S. Mail, postage prepaid, on the attorneys of record addressed as follows:

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